

ESTTA Tracking number: **ESTTA618528**

Filing date: **07/30/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91197504
Party	Plaintiff Omega SA (Omega AG) (Omega Ltd.)
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Date	07/30/2014
Attachments	K655 - Supp to Opposer's MOT to preclude.pdf(113272 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

OMEGA S.A. (OMEGA AG)
(OMEGA LTD),
Opposer,

v.

ALPHA PHI OMEGA,
Applicant.

Mark: ALPHA PHI OMEGA and design
Opp. No.: 91197504 (Parent)
Serial No.: 77950436

OMEGA S.A. (OMEGA AG)
(OMEGA LTD),
Opposer,

v.

ALPHA PHI OMEGA,
Applicant.

Mark: AΦΩ
Opp. No.: 91197505 (Child)
Serial No.: 77905236

**SUPPLEMENT TO OPPOSER'S MOTION TO PRECLUDE UNJUSTIFIABLY
DELAYED DISCOVERY PRODUCTION AND TO COMPEL DISCOVERY**

Opposer hereby respectfully submits this Supplement to its Motion to Preclude Unjustifiably Delayed Discovery Production and to Compel Discovery (hereinafter "Motion to Compel"), as filed on July 29, 2014. Applicant has now filed a Motion for Summary Judgment (also on July 29, 2014). Applicant's filing is exactly the type of action that necessitated Opposer's Motion to Compel. Applicant attempts to rely upon documents and evidence it withheld for over a year. After finally producing such materials on July 25, 2014, Applicant seeks to use such documents two (2) business days later to support its Motion for Summary Judgment. This last second production is all the more egregious because Applicant has again

and again refused requests for supplementation during discussions between counsel. Opposer has had to rely upon Applicant's assertions that if documents were found they would be timely produced, while Applicant ignored requests for confirmation that no further responsive documents are available or that all responsive documents had been produced. Whether or not Applicant's conduct in relation to discovery and unjustifiably late document production were intended to prejudice and unfairly surprise Opposer, the effects are precisely these, and are plainly contrary to the rules.

Applicant's Motion for Summary Judgment is predicated upon materials which Opposer has not and could not fully investigate. Applicant's dilatory disclosure deprives Opposer of any opportunity to examine these declarants, ascertain the provenance of documents produced, and/or seek any follow up discovery.

As Opposer explained in its Motion to Compel, the documents produced by Applicant on July 25, 2014 could have been produced as early as fourteen (14) months ago (at least as early as May 2013) along with Applicant's initial discovery responses and production. Instead, Applicant has held these documents and the identities of potential witnesses until the opening of Opposer's testimony period, preventing Opposer from a fair opportunity to consider and further examine these declarants or those who would speak to their relevance, significance, or even authenticity. Applicant should not be rewarded for such conduct.

Opposer respectfully requests that Applicant's July 25, 2014 document production be excluded from this proceeding.

Respectfully Submitted,

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Date: July 30, 2014
JMC/OG/KAM/mcm

SHOULD ANY OTHER FEE BE REQUIRED, THE PATENT AND TRADEMARK OFFICE IS HEREBY REQUESTED TO CHARGE SUCH FEE TO OUR DEPOSIT ACCOUNT 03-2465.

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING FILED THROUGH THE ELECTRONIC SYSTEM FOR TRADEMARK TRIAL AND APPEALS IN THE UNITED STATES PATENT AND TRADEMARK OFFICE.

COLLEN IP

By:  Date: July 30, 2014

CERTIFICATE OF SERVICE

I, Meaghan Machcinski, hereby certifies that a copy of the foregoing **Supplement to Opposer's Motion To Preclude Unjustifiably Delayed Discovery and To Compel Discovery Responses** was served by First Class U.S. Mail, postage prepaid on this 30th Day of July, 2014 upon

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